of. "This opinion I base on the substantial ground that a patron of a public amusement who pays for admission obtains, by the contract so formed, and by acting on the licence which it imports, no equity against the subsequent revocation of the licence and the exercise by the proprietor of his common law right of expelling the patron."[10] The fact that the Court found it necessary to state that the contract was not one for which equity would decree specific performance (presumably the precise form, if such a remedy were available, would be an injunction against the revocation of the licence) seems to indicate that they thought that if the contract were such that equity would enforce, then the mere fact that it would not be possible for the plaintiff to obtain his decree in time to prevent his ejection would not prevent him from recovering damages for assault. The view of the Court seems quite definite that it was not the mere accident that the time factor did not permit equity to intervene in time to prohibit the ejection of the plaintiff which prevented him from recovering his damages, but that the reason why he could not succeed was that even if the time factor did permit it, equity would not interfere on his behalf because the contract was not one to which equitable remedies were applicable.

K. A. AICKIN.

10. *Per* Dixon J., at p. 282.

BRADLAUGH AND THE OATHS ACT

Section 95 of the Victorian Evidence Act 1928 provides that persons without religious belief or whose religious belief is such that the taking of an oath is contrary to such belief, may make a solemn affirmation in lieu thereof.

The particularly wide scope of the Section is well illustrated by an incident recently occurring in one of our Police Courts. A witness, strenuously averring religious belief, refused to take the oath, because he maintained the Bible forbade him to swear. Apparently, he had discovered *Matthew*, Chapter 5, Verses 34-37: "But I say unto you, swear not at all . . . but let your communication be Yea, yea; Nay, nay; for whatsoever is more than these cometh of evil." The Police Magistrate hurriedly decided that this was a case to invoke the affirmation provision of Section 95 of the Evidence Act, which thus neatly abrogates the disconcerting necessity for a judicial pronouncement on the precise connotation of the verses referred to. And so examples may be multiplied, disclosing with similar pungency the manner in which this provision operates as a vitally essential incident of judicial activity.

Yet it was not until the latter part of last century, by an Act of 1888, that the right to affirm was indisputably secured. This, the Oaths Act,[1] is the progenitor from which Section 95 of the Victorian Evidence Act is a "lineal" descendant. It was an enactment passed

1. Section 46, 51 and 52 Vic.

as the direct result of a titanic, and very colourful political legal struggle, waged by the member for Northampton, Charles Bradlaugh.

To-day, Bradlaugh is praised in many places. He is dead and, of course, it is very much easier to praise a dead reformer than it is to applaud a living one. He worked with unparalleled tenacity and sincerity for many causes, from Malthusianism to Republicanism. But first and foremost, Bradlaugh was an Atheist, without compromise, without qualification. It was because of this factor, that he felt compelled to enter into the strife which was to continue unabated for the eight wearying years immediately following his election to Parliament in 1880.

In the general elections held in that year, Bradlaugh had been elected the member for the borough of Northampton. On duly presenting himself at the table, a motion was made and allowed by the Speaker that he be not permitted to take the oath, on the ground that it would not be binding on an Atheist. The motion was eagerly supported by the Conservatives, who saw in it a very potent means of embarrassing the Government, together with the Liberals, whose "liberality" was adequately tempered by the alert thought of the non-conformist vote.

Now the oath, of course, was as binding on Bradlaugh as any other promise, though the words of imprecation did not to him add to its force. In addition, it is to be noted, that although it was a rule of the common law that persons of no religious belief were incompetent as witnesses, being incapable of acknowledging the origination of an oath, prior to Bradlaugh's time, the oath in England had been adapted to the requirements of Catholics, Quakers, and Jews respectively. It should also be pointed out that Bradlaugh did not "refuse" to take the oath of allegiance. Believing he had a right to affirm, he submitted this request to the Speaker of the House. The request was referred to a select committee. By the chairman's casting vote, the committee declared that he could not affirm, and left him to swear. The House then referred the point of his swearing to a larger committee, which decided by a majority that he could not swear, but recommended, after all, that he be allowed to affirm. It appears that the House stood by the finding of both committees so far as it was hostile, and overruled that of the second in so far as it was favourable. Eventually, a motion that members be allowed to affirm at their legal peril was carried. Following this, Bradlaugh took his seat, and voted for a period of approximately nine months.

One Clarke, thereupon sued him for a penalty imposed[2] for sitting and voting without taking the Parliamentary Oath,[3] Bradlaugh, by this time, having incurred liability for over £45,000 in penalties. In fact, Clarke was a man of straw, who had been instigated and backed by a Conservative member of Parliament, the latter's conduct later being held to amount to actionable maintenance.[4] Bradlaugh, who as usual appeared in person, argued in vain, that the Parliamentary

2. Section 5, 29 and 30 Vic. c. 19.
3. *Clarke v. Bradlaugh* (1881) 7 Q.B.D. 38.
4. *Bradlaugh v. Newdegate* (1883) 11 Q.B.D. 1.

Oaths Act of 1866, read with the enabling clauses of the Evidence Further Amendment Act (1869), and the Evidence Amendment Act (1870), entitled him to affirm allegiance. Unabashed, he took the case to the House of Lords. Here, however, the only point argued by Bradlaugh was that a common informer had no right to sue for penalties imposed by the particular statute, constituting the basis of the action. This contention was upheld, and Bradlaugh secured his costs, thereby thwarting a deliberate attempt to force him into bankruptcy, through the sophisticated medium of the legal machinery of the Courts of Justice.

In the meantime, however, because of the decision of the Court of Appeal in *Clarke's* case, Bradlaugh's seat was vacant in law. He stood for re-election and was again returned. An Affirmation Bill was introduced and not defeated until May, 1883, and after his initial attempt to take the oath, Bradlaugh did not trouble the House again until the day after the Bill had been rejected. Once again the inevitable motion excluding him from the House was dutifully passed. To test the legality of this motion, Bradlaugh sued Captain Gossett, the Sergeant-at-Arms, endeavouring to obtain an injunction to restrain him from carrying the motion into effect.[5] This case is a leading authority on the jurisdiction of the House of Commons and its relation to the ordinary law, and decides, that the House of Commons is not subject to the control of the ordinary courts, in the administration of that part of the statute law, which has reference to its own internal proceedings. Accordingly, although the House had prevented Bradlaugh from fulfilling his duty to the electorate which had returned him, the judgments made it quite clear, that if injustice had been done, the courts of law offered no remedy. Bradlaugh was therefore left to seek what consolation he could from the doctrine of *damnum sine injuria*.

Anticipating the adverse decision ultimately given, Bradlaugh had placed the situation before his constituents, who once more declared their entire confidence in him. Consequently, the only course open to him was to present himself at the table and administer the oath to himself. He did this, enacting the entire procedure, before the agitated House had time to do anything about it. Following this it was moved, firstly, that this was not a valid taking of the oath, and secondly, that Bradlaugh be excluded from the precincts of the House. These motions were carried, and eventually he was unseated for the third time since his perfectly valid return in 1880. For the fourth time Northampton returned him.

Meanwhile, having voted upon the question of his own exclusion, an opportunity was presented to the Government to determine the validity of the self-administered oath. The recondite nature of the proceedings duly brought by the Attorney-General may be gauged by the fact that Bradlaugh had arrayed against him five eminent counsel, including the Solicitor-General and Sir Hardinge Giffard

5. *Bradlaugh v. Gosset* (1884) 12 Q.B.D. 271.

Q.C., later to be elevated to the woolsack as Lord Halsbury. Ultimately, in the Court of Appeal, it was held, *inter alia,* that the oath of allegiance, as enacted by the Parliamentary Oaths Act, amended by the Promissory Oaths Act (1868), could not be taken by one who did not believe in a Supreme Being.[6] Thus Bradlaugh was incapable by law of taking the oath. At once he gave notice of appeal to the House of Lords, but further litigation was to be unnecessary.

In 1886 a new Parliament assembled. Mr. Speaker Brand had been succeeded by a new Speaker (Mr. Peel), who had determined to reverse his predecessor's policy in the Bradlaugh case. He ruled that a motion to prevent Bradlaugh from taking the oath would be out of order, allowing Bradlaugh to take the oath (although he had been declared by the Court incapable of doing so) and vote in peace; and, although the Attorney-General could have taken proceedings at any time to recover a penalty, no such steps were taken.

Finally, in 1888, Bradlaugh's affirmation Bill became law, being carried by the same members who had so monotonously opposed and rejected former Bills of its tenor. The victory was singularly complete. The right to affirm in any case where an oath was demanded, in Parliament or elsewhere, being thenceforth conclusively established.

As may be apparent, from even the above meagre account of portion of Bradlaugh's epoch-making career, he manifested a political genius even surpassed by extraordinary pertinacity and ability in the legal sphere. He is unique amongst that select band of skilled lay-lawyers, headed, perhaps, by the late Horatio Bottomley of pious memory, inasmuch as, invading the jealously-guarded prerogative of the trained lawyer, he contributed lasting and valuable service to English law. As is so aptly epitomed by Dr. W. Ivor Jennings[7]: "He beat most lawyers at their own game. Even when he was, according to their judgments, unsuccessful, he did not really lose. For he showed up some of the mass of nonsense that English law contains. When he relied on narrow points of pleading and niggling illogicalities, he showed how law, and pleading, and practice, so easily defeat justice. He proved that a Bentham is needed at least once a generation, if the development of law, and legal procedure, is to be left to the Judges themselves."

In 1891, while Bradlaugh lay dying, the House of Commons passed a resolution expunging from the Journals of the House the resolutions excluding him in former years.[8]

JACK LAZARUS.

6. *A.G. v. Bradlaugh* (1884) 14 Q.B.D. 667.
7. *Charles Bradlaugh, Champion of Liberty,* p. 326.
8. The Commonwealth Nationality Act (1920-36) anomalously contains no provision for an affirmation of allegiance, although its predecessor, the Naturalization Act (1903-17), categorically conferred a right of affirmation (S. 7).